

RCE/1600



# REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL

Address to:  
Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	09/780,503
Filing Date	February 9, 2001
First Named Inventor	Sethi et al.
Art Unit	1654
Examiner Name	Louise N. Leary
Attorney Docket No.	11520.0228

RECEIVED  
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#15

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** NOTE: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed, unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

- a. ☐ Previously submitted. If a final Office Action is outstanding, any amendments filed after the final Office Action may be considered as a submission even if this box is not checked.
- i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on \_\_\_\_\_
- ii. ☐ Other \_\_\_\_\_
- b. ☒ Enclosed
- i. ☒ Amendment/Reply
- ii. ☒ Affidavit(s)/Declaration(s)
- iii. ☐ Information Disclosure Statement (IDS)
- iv. ☐ Other \_\_\_\_\_

## 2. Miscellaneous

- a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
- b. ☐ Other \_\_\_\_\_

3. **Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

- a. ☒ The Director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No. 08-2442
- i. ☒ RCE fee required under 37 CFR 1.17(e)
- ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17)
- iii. ☐ Other \_\_\_\_\_
- b. ☒ Check in the amount of \$375.00 enclosed
- c. ☐ Payment by credit card (Form PTO-2038 enclosed)

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

## SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED

Name (Print/Type)	Ranjana Kadle	Registration No. (Attorney/Agent)	40,041
Signature		Date	August 6, 2003

## CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner For Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Name (Print/Type)	Susan L. Eick	Date	August 6, 2003
Signature			

08/11/2003 TTRM1 00000006 09780503 375.00 0P  
01 FC:2801

# **FEE TRANSMITTAL** for FY 2003

Effective 01/01/2003. Patent Fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT (\$555.00)

Application Number 9/780,503

Filing Date February 9, 2001

First-Named Inventor Sethi et al.

Examiner Name Louise N. Leary

Group/Art Unit 1654

Attorney Docket Number 11520.0228

## **METHOD OF PAYMENT (check all that apply)**

☒ Check ☐ Credit Card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account: Deposit Account Number: 08-2442

Deposit Account Name: Hodgson Russ LLP

The Director is hereby authorized to (check all that apply)

☐ Charge fee(s) indicated below

☒ Charge any fee deficiencies or credit any overpayments

☐ Charge any additional fees during pendency of this application.

☐ Charge fees indicated below, except for the filing fee to the above-identified deposit account

## **FEE CALCULATION**

### **1. BASIC FILING FEE**

Large Entity Small Entity

Fee Fee Fee Fee Fee Description Fee Paid

Code (\$) Code (\$) Code (\$) Code (\$) Code (\$) Code (\$)

1001 750 2001 375 Utility filing fee \$

1002 330 2002 165 Design filing fee \$

1003 520 2003 260 Plant filing fee \$

1004 750 2004 375 Reissue filing fee \$

1005 160 2005 80 Provisional filing fee \$

**SUBTOTAL (1)** \$ 0

### **2. EXTRA CLAIM FEES FOR UTILITY/ REISSUE**

Extra Fee from Claims below

Total Claims // -20\*\* = // x // = \$

Independent Claims // - 3\*\* = // x // = \$

Multiple dependent // x // = \$

Large Entity Small Entity

Fee Fee Fee Fee Fee Description Fee Paid

Code (\$) Code (\$) Code (\$) Code (\$) Code (\$) Code (\$)

1202 18 2202 9 Claims in excess of 20 \$

1201 84 2201 42 Independent claims in excess of 3 \$

1203 280 2203 140 Multiple dependent claim if not paid \$

1204 84 2204 42 \*\*Reissue independent claims over original patent \$

1205 18 2205 9 \*\*Reissue claims in excess of 20 and over original patent \$

**SUBTOTAL (2)** \$ 0

### **SUBMITTED BY:**

Ranjana Kadle Reg. No. 40,041

### **SIGNATURE**

DATE: August 6, 2003 Telephone: (716) 848-1628

## **FEE CALCULATION (continued)**

### **3. ADDITIONAL FEES**

Large Entity

Small Entity

Fee Fee Fee Fee Fee Description Fee Paid

Code (\$) Code (\$) Code (\$) Code (\$) Code (\$) Code (\$)

1051 130 2051 65 Surcharge - late filing fee or oath \$

1052 50 2052 25 Surcharge - late provisional filing fee or cover sheet \$

1053 130 1053 130 Non-English specification \$

1812 2,520 1812 2,520 For filing a request for *ex parte* reexamination \$

1804 920\* 1804 920\* Requesting Publication of SIR prior to Examiner Action \$

1805 1,840\* 1805 1,840\* Requesting Publication of SIR after Examiner Action \$

1251 110 2251 55 Extension for reply within first month \$

1252 410 2252 205 Extension for reply within second month \$

1253 930 2253 465 Extension for reply within third month \$

1254 1,450 2254 725 Extension for reply within fourth month \$

1255 1,970 2255 985 Extension for reply within fifth month \$

1401 320 2401 160 Notice of Appeal \$

1402 320 2402 160 Filing a brief in support of an appeal \$

1403 280 2403 140 Request for oral hearing \$

1451 1,510 1451 1,510 Petition to institute a public use proceeding \$

1452 110 2452 55 Petition to revive - unavoidable \$

1453 1,300 2453 650 Petition to revive - unintentional \$

1501 1,300 2501 650 10 advance copies \$

1502 470 2502 235 Utility issue fee (or reissue) \$

1503 630 2503 315 Design issue fee \$

1460 130 1460 130 Plant issue fee \$

1460 130 1460 130 Petitions to the Commissioner \$

1807 50 1807 50 Processing fee under 37 CFR 1.17(q) \$

1806 180 1806 180 Submission of Information Disclosure Statement \$ 180

8021 40 8021 40 Recording each patent assignment per property (times number of properties) \$

1809 750 2809 375 Filing a submission after final rejection(37 CFR 1.129(a)) \$

1810 750 2810 375 For each add'l invention to be examined(37 CFR 1.129(b)) \$

1801 750 2801 375 Request For Continued Examination (RCE) \$ 375

1802 900 1802 900 Request for Expedited Examination of a design application \$

Other fee (specify) \$

\*Reduced by basic filing fee paid

**SUBTOTAL (3)** \$ 555



I hereby Certify that this Correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on August 6, 2003

Susan L. Eick

Name

Susan L. Eick

Signature

August 6, 2003

Date of Signature

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J.G.J  
8/14/03

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Sethi et al.

Examiner: Louise N. Leary

Serial No.: 09/780,503

Art Unit: 1654

Filed: February 9, 2001

For: A Method for Detecting Bacterial Exacerbations of Chronic Lung Disease

**RESPONSE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the Office Action dated May 13, 2003, Applicants respond as follows.

Claims 1-20 are pending. In an office action dated May 13, 2003, the Examiner has rejected several claims as being unpatentable under 35 USC 103 over Tsang et al. (Chest, 117:420-426, 2000). In a previous response, Applicants had submitted evidence to indicate receipt of this issue of the journal Chest in the State University of Buffalo library after the priority date of the instant application. However, the Examiner does not accept this to constitute sufficient evidence to remove the Tsang et al reference as prior art.

Applicants herewith file a request for continued examination. With respect to the Examiner's rejections, Applicants will respond to each point made by the Examiner:

(1) Tsang et al. manuscript was accepted on July 15, 1999.

The date of public availability of a published article is when the particular issue containing the article is published. The mere fact that an article is submitted for publication or accepted by the journal for publication does not constitute public disclosure or availability. Reviews by journals are deemed to be confidential and do not rise to the level of public disclosure. Therefore, the date when the article was accepted for publication is irrelevant.

(2) Sale or offer for sale by an independent third party ("National Sales Representative")

The Examiner contends that a sale or an offer for sale was made by an independent sales representative more than one year before the earlier priority date of this application i.e., earlier than February 19, 1999. It is not clear what the basis of the Examiner's contention is. The "National Sales Representatives" on page A5 of the CHEST journal refers to the sales representatives of the journal. As discussed above, review of articles by journals are conducted under confidentiality and are not available to the public until actual publication of the particular issue. Accordingly, it is not clear to the Applicants how the journal CHEST having a sales representative means that an offer for sale or sale of the present invention occurred more than one year prior to the of the filing date of the provisional application for the present invention. The Examiner is respectfully requested to clarify her position.

(3) Date of receipt of Tsang et al. by SUNY library does not represent the dates at which all subscribers received copies.

Applicants herewith submit a Rule 1.131 declaration by one of the inventors, Dr. Sanjay Sethi, indicating that the present invention was complete prior to February 2000, the publication date of Tsang et al.

(4) Tsang et al. was published and distributed during the first two weeks of February 2000.

As mentioned under (3), Applicants herewith submit a Rule 1.131 declaration indicating that the invention was complete prior to February 2000.

(5) Applicants have not submitted a declaration swearing behind the Tsang et al. reference.

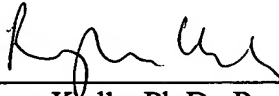
As discussed under (3) and (4), Applicants with this response herewith submit the Rule 1.131 declaration swearing behind the Tsang et al. reference.

**Conclusion**

Based on the above arguments and amendments, Applicants believe that claims 1-20 are now in a condition for allowance and therefore respectfully request the Examiner to allow all the claims.

This response is being filed within 3 months of the date of the Office Action and therefore it is believed that no extension fee is due. However, if that is incorrect, any fee due may be charged to Deposit Account No. 08-2442.

Respectfully submitted,  
HODGSON RUSS LLP

By   
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Dated: August 6, 2003